

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. GCU-2022-0003

ORDER GRANTING REQUEST FOR WAIVER AND CANCELING HEARING

BACKGROUND

On October 31, 2022, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) an application for a certificate of public convenience, use and necessity pursuant to Iowa Code chapter 476A (Application) for a proposed 150 megawatt (MW) solar generating facility and a 75 MW battery energy storage system (BESS) located near the unincorporated community of Wever in Lee County, Iowa. With its application, IPL filed a number of exhibits and an appendix.

On December 14, 2022, the Board issued an initial review order as required by Iowa Administrative Code (IAC) subrule 199—24.5(1). The Board determined IPL's application to be substantially complete and docketed the matter for investigation. In the order, the Board directed IPL to mail an attached notice to all persons included in its Exhibit M and tentatively scheduled a hearing for April 13, 2023. On January 5, 2023, IPL filed a proof of mailing in which it averred that on December 22, 2022, it mailed notice to all persons identified in its Exhibit M.

On January 11, 2023, the Iowa Business Energy Coalition (IBEC) filed a petition to intervene and Shirley Deck and Bob Brown filed a joint petition to intervene. On

DOCKET NO. GCU-2022-0003

PAGE 2

February 3, 2023, the Board issued an order establishing a procedural schedule and granting the intervention requests filed by IBEC and Ms. Deck and Mr. Brown.

On January 26, 2023, IPL filed a request for waiver pursuant to Iowa Code § 476A.15 and rule 24.15. Specifically, IPL requested the Board waive the hearing and associated procedural requirements set forth in Iowa Code §§ 476A.4 and 476A.5 and 199 IAC rules 24.6, 24.8, and 24.9. In its request, IPL stated it intended to mail a copy of its waiver request to all owners of record of real property within the proposed project's footprint and within 1,000 feet of the proposed project's boundary as listed in Exhibit M. On February 6, 2023, IPL filed a proof of mailing, indicating that its waiver request had been mailed to all persons identified in its Exhibit M.

On February 3, 2023, Intervenor Deck and Brown filed a response to IPL's waiver, stating they wish IPL to be prohibited from installing solar panels within 1,200 feet of their residences and requesting to be heard on that issue. On February 15, 2023, the Office of the Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a response to IPL's waiver request in which it asserted it "does not oppose IPL's request for a waiver and certificate" subject to certain conditions. Both responses will be discussed in greater detail below.

On February 13, 2023, IPL filed a statement in lieu of direct testimony in which IPL identified its witnesses and the portions of the Application and exhibits each witness sponsored. On March 10, 2023, OCA filed the testimony of its sole witness and one exhibit. On March 13, 2023, Intervenor Deck filed her testimony, which was subsequently revised, and exhibits. Also on March 13, 2023, Intervenor Brown filed his testimony and exhibits. On March 24, 2023, IPL filed the rebuttal testimony of two of its witnesses and a rebuttal exhibit.

DOCKET NO. GCU-2022-0003

PAGE 3

On March 24, 2023, IPL filed a motion to excuse a number of its witnesses. In its motion, IPL stated OCA and Intervenor Brown do not object to IPL's request. On March 28, 2023, Intervenor Deck filed a response in which she expressed her opposition to IPL's motion.

BOARD ANALYSIS

In its January 26, 2023 filing, IPL requests the Board waive the hearing requirement and associated procedural requirements set forth in Iowa Code §§ 476A.4 and 476A.5. IPL also requests the Board waive the following administrative rules:

- **Rule 24.6:** Rule 24.6 requires the issuance of a procedural schedule, including a hearing, once the Board accepts an application.
- **Rule 24.8:** Rule 24.8 sets forth the hearing procedures.
- **Rule 24.9:** Rule 24.9 provides the option for separate hearings on separate issues.

In support of its waiver request, IPL observes that its request is consistent with recent Board precedent in other solar generation certification proceedings. Similar to the circumstances involved in those other cases, IPL contends that waiving the hearing requirement and associated procedural schedule will not adversely affect the public interest and that, absent the waiver, IPL would suffer undue hardship.

Iowa Code § 476A.15 provides the Board with the authority to waive any of the requirements of Iowa Code chapter 476A "if it determines that the public interest will not be adversely affected" Similarly, rule 24.15 provides that the Board may waive any provision of chapter 24 "if it determines that the public interest would not be adversely affected" In determining whether the waiver would adversely affect the public interest, the Board may consider the purpose and type of facility, whether the facility is for the applicant's own needs, the facility's effect on existing transmission systems, and any other relevant factors. *Id.*

DOCKET NO. GCU-2022-0003

PAGE 4

As noted above, responses to IPL's waiver request have been filed by OCA and Intervenor Deck and Brown. Prior to evaluating the waiver request, the Board will address the responses.

A. OCA Response to Waiver Request.

In its February 15, 2023 response, OCA states that in Docket No. RPU-2021-0003, the Board is currently reviewing the need and cost-effectiveness of IPL's proposal to construct 400 MW of solar and 75 MW of BESS.¹ OCA states that it "does not oppose IPL's request for a waiver and a certificate as long as the Board makes clear in its order that granting the certificate does not constitute a finding that the proposed project is needed or cost-effective, and that IPL's ability to recover the cost of the project from ratepayers will be decided when IPL seeks to include those costs in rates." OCA further states that if this matter proceeds to hearing, its participation will be limited because, as already stated, it does not oppose IPL's request for a waiver or its application for a generation certificate subject to those concerns identified above.

The concerns raised by OCA are implicated if the Board grants IPL's Application and issues IPL a generating certificate, and this order does neither. Rather, this order solely addresses whether to grant IPL's waiver request of the hearing and associated requirements. An analysis regarding the substance of OCA's concerns will be addressed if, in the final order, the Board finds IPL has proven the Iowa Code § 476A.6 criteria.

¹ On November 2, 2021, IPL filed with the Board an application for advance ratemaking principles, and the proceeding was identified as Docket No. RPU-2021-0003. On November 9, 2022, the Board issued a Final Order finding IPL's application to be not in compliance with Iowa Code § 476.53(3)(c)(2) and, therefore, denied the same. However, following the filing of an IPL motion to reconsider, on December 29, 2022, the Board granted partial reconsideration, and IPL has filed a petition for judicial review from that decision. As of the date of this order, the proceeding in Docket No. RPU-2021-0003 remains pending.

DOCKET NO. GCU-2022-0003

PAGE 5

B. Intervenor Deck and Brown's Response to Waiver Request.

Both Intervenor Deck and Brown reside on property each owns on 330th Avenue between 163rd Street and 170th Street. Adjoining their properties to their immediate east is a field (hereinafter, the "field") used for agricultural purposes that is separated into a western section and an eastern section by a grassed waterway. In its Application, IPL states it possesses the land rights necessary to use both the west and east portions of the field to install solar generation equipment; however, based on information presented in its preliminary plans, IPL intends to install solar generation equipment, including perimeter fencing, only on the eastern portion of the field. See IPL Application, Exhibit D, Map Area B (the area in question is northeast of the Lost Creek Cemetery).

In their response to IPL's waiver request, Intervenor Deck and Brown state they wish to be heard on the location of IPL's proposed solar panels and solar arrays on that portion of the proposed project area that adjoins their property. Specifically, Intervenor Deck and Brown state that at hearing they intend to request the Board prohibit IPL from installing solar panels on the western portion of the field. See Intervenor Shirley Deck Direct Testimony p. 2 (stating "Shirley Deck wants IPL to be required to keep their placement of solar panels now and any future plans in the Wever Solar Project at least 1200 feet from the residences of Shirley Deck and Bob Brown or limited to the east half" of the field); Intervenor Bob Brown Direct Testimony p. 4 (stating "[w]e do feel what is shown [on IPL's preliminary plans] would be far enough away from our home to ligate a lot of our concerns with the project and construction phase").

In response to Intervenor Deck's and Brown's concerns, on March 24, 2023, IPL filed the rebuttal testimony of Mr. Justin A. Foss. Mr. Foss testified as follows:

DOCKET NO. GCU-2022-0003

PAGE 6

At this point in the design phase IPL has determined that it will not use the western field, identified in Intervenor Deck's testimony and Deck Exhibit 1, closest to the Intervenor's properties for this project. Filed with my testimony is Foss Rebuttal Exhibit 1 which shows IPL's proposed revised Project Boundary in the area near the Intervenor's properties. . . . This property is being excluded from the project boundary

IPL Justin Foss Rebuttal Testimony p. 2.

As referenced in this testimony, IPL Foss Rebuttal Exhibit 1, which is a revised project boundary map of the relevant area, excludes the western portion of the field that adjoins Intervenor's Deck's and Brown's properties. Given IPL's amendment to the proposed project area, the contested issue in dispute identified by Intervenor's Deck and Brown in their response to IPL's request for waiver has been resolved.

In her Direct Testimony, Intervenor Deck also states she is "seriously concerned" about the location of the proposed BESS component of IPL's project. Intervenor Shirley Deck Direct Testimony p. 7. Intervenor Deck states she lives approximately 2.5 miles away from the BESS component and is concerned with Lee County's and first responders' ability to combat any emergency situation at the BESS location. *Id.* at pp. 7-8. Consequently, Intervenor Deck expresses worry for the residents of the area. *Id.* at p. 8.

Notably, neither Lee County nor any person acting on behalf of Lee County filed information in this docket expressing similar concern. On January 20, 2023, IPL filed a copy of a "Solar Generating Facility Joint Development Agreement" between Lee County and IPL. Attached to and incorporated into the agreement is a project site development map, which includes the location of the BESS component. Undoubtedly, if it had a concern with the BESS component's proposed location, Lee County would have addressed it in the agreement.

DOCKET NO. GCU-2022-0003

PAGE 7

Intervenor Deck has presented no evidence to suggest a hearing is necessary to resolve any material, disputed facts with regard to the issues she raises. See Iowa Code § 17A.10A (the contested case statutory provisions relating to the presentation of evidence may not apply where there are no factual disputes). At most, Intervenor Deck's direct testimony and other filings only establish that she has worries and concerns, and, as recognized by the Iowa Supreme Court in other contexts, "[s]peculation is not sufficient to generate a genuine issue of fact." *Banwart v. 50th Street Sports, LLC*, 910 N.W.2d 540, 545 (Iowa 2018) (quoting *Hlubek v. Pelecky*, 701 N.W.2d 93, 96 (Iowa 2005)). Intervenor Deck has not shown, or argued, why she believes her concerns and the topics of her desired cross-examination are relevant to any of the decision criteria the Board must consider in analyzing whether to grant IPL's Application. See e.g., *State v. Davis*, 269 N.W.2d 434, 438 (Iowa 1978) (holding that no party has a right to cross-examine facts that are irrelevant or immaterial to the issues before the trier of fact).

If, in the final order, IPL's Application is granted, the Board will address Intervenor Deck's concerns regarding the location of the proposed BESS component. However, for purposes of IPL's waiver request, Intervenor Deck's unsubstantiated concerns do not establish the existence of a factual dispute for purposes of § 17A.10A and do not establish that the public interest would be adversely affected should the waiver be granted under § 476A.15.

C. Public Interest.

With respect to the public interest, rule 24.15 provides several factors the Board may consider when determining whether the issuance of a waiver will adversely affect the public interest, including the purpose of the facility, the type of facility, how the

DOCKET NO. GCU-2022-0003

PAGE 8

produced energy is used, and the effects of the facility on the existing transmission system. Because the waiver concerns the hearing and related procedural requirements, the Board may consider whether a hearing would assist in its review of whether to issue a generating certificate.

Iowa Code § 476A.6 provides that the Board “shall”² issue a generating certificate if the Board finds the following elements: (1) the facility’s services and operation are consistent with the legislative intent expressed in § 476.53 and the state’s economic development policies, and will not be detrimental to the provision of adequate and reliable electric service; (2) the applicant is willing to construct, operate, and maintain the facility pursuant to the provisions that are included in the certificate and Iowa Code chapter 476A, subchapter I; and (3) the construction, operation, and maintenance of the facility will be consistent with reasonable land use and environmental policies. In determining whether the “consistent with reasonable land use and environmental policies” factor is met, the Board may consider whether any adverse impacts caused by the construction, operation, and maintenance of the facility are reduced to a reasonably acceptable level, whether the proposed site represents a reasonable choice, and whether the proposed facility complies with local zoning requirements. 199 IAC 24.10(2)(b). If these elements are established, a generating “certificate ***shall be issued*** to the applicant” Iowa Code § 476A.6 (emphasis added).

Having reviewed the information filed by IPL and the other parties, the Board does not consider a hearing to be necessary to assist in its consideration of the

² According to Iowa Code § 4.1(30)(a), as used in the Iowa Code, the term “shall” imposes a duty. The Iowa Supreme Court has further “interpreted the term ‘shall’ in a statute to create a mandatory duty, not discretion.” *State v. Klawonn*, 609 N.W.2d 515, 521-22 (Iowa 2000).

DOCKET NO. GCU-2022-0003

PAGE 9

§ 476A.6 factors. As noted above, the primary contested issue that would have necessitated a hearing concerned IPL's use of the western portion of the field that adjoined Intervenor Deck's and Brown's properties. Through the filing of IPL's rebuttal testimony, that issue has been resolved.

Additionally, eminent domain is not implicated in this case; rather, the proposed project is located entirely on land in which voluntary leases and easements have been executed. This is not a situation in which the Board is being asked to condemn private property, and, if that were the case, the Board would not waive the hearing requirement.

The public has been afforded the opportunity to submit comments and objections regarding the proposed project. The parties have been afforded the opportunity to submit testimony and evidence, which the Board will consider when rendering a final decision. OCA, which is statutorily vested with the responsibility of representing the public generally in Board proceedings under § 475A.2(2), does not oppose IPL's waiver request subject to the caveats that will be further discussed in the Board's final order. Therefore, under Iowa Code § 476A.15 and 199 IAC 24.15, the Board finds that the public interest will not be adversely affected by waiving the procedural schedule and hearing requirements contained in §§ 476A.4 and 476A.5 and Board rules 24.6, 24.8, and 24.9.

D. Rule 1.3.

Next, the Board will consider IPL's waiver request under the four criteria enumerated within 1.3. The first criterion requires IPL to establish that application of the rules would impose an undue hardship. IPL states that due to its need to place the project into service by December 2024, and based on the information contained in its detailed application, imposing the hearing and associated procedural requirements

DOCKET NO. GCU-2022-0003

PAGE 10

could cause IPL undue hardship. IPL states that if its waiver request is denied, IPL's ability to maximize tax benefits could be jeopardized, and its ability to meet the energy and capacity needs of its customers could be impeded. No party has objected to these factual assertions, and the Board will accept them as true for purposes of IPL's waiver request. Furthermore, IPL notes that it has entered into a "Solar Generating Facility Joint Development Agreement" with Lee County and, under the terms of that agreement, IPL provided a corporate guarantee for any financial obligation to Lee County. These circumstances meet the undue hardship requirement given IPL has acquired all necessary leases and easements for the proposed project sites and has entered into an agreement with Lee County concerning the construction, operation, and decommissioning of the proposed project.

Next, IPL contends that waiving the hearing and related procedural requirements would not prejudice the substantial legal rights of others. As already noted above, IPL has acquired all necessary leases and easements with landowners throughout the entire project site, and, consequently, IPL is not requesting the power of eminent domain. While Intervenor Deck and Brown responded to IPL's waiver request by stating they wished to be heard on the location of IPL's proposed solar panels and solar arrays on that portion of the proposed project area that adjoins their property, IPL resolved that issue by removing the western portion of the field from the project. Additionally, all parties have had the opportunity to file testimony and exhibits, which the Board will consider in preparing the final order. The Board finds that granting the waiver of the procedural schedule and hearing will not prejudice the substantial legal rights of other persons.

DOCKET NO. GCU-2022-0003

PAGE 11

Third, the Board finds the provisions for which waivers are requested are not mandated by law. While Iowa Code §§ 476A.4 and 476A.5 normally require a hearing be scheduled and occur prior to the issuance of a generating certificate, the Legislature delegated authority to the Board to waive these requirements. See Iowa Code § 476A.15. The Board has found that the public interest will not be adversely affected by waiver of the scheduling and hearing requirements. This element of rule 1.3 has been met.

Finally, the Board must examine whether the substantially equal protection of public health, safety, and welfare may be afforded by means other than through a hearing. The Board has previously found that the reasons for holding a generating certificate hearing include providing the affected public and regulatory agencies an opportunity to submit information to the Board and allowing the owners of the facility to present information from which the Board may apply the § 476A.6 decision criteria. See *In re: Hawkeye Solar, LLC, and In re: Hatchling Solar, LLC*, Docket Nos. GCU-2021-0006 and GCU-2021-0007, “*Order Granting Requests for Waivers and Applications for Certificates of Public Convenience, Use and Necessity under Iowa Code chapter 476A*,” p. 12 (Oct. 28, 2022); *In re: Holliday Creek Solar, LLC*, Docket No. GCU-2020-0001, “*Order Granting Petition for Intervention, Request for Waivers, and Application for a Certificate of Public Convenience, Use and Necessity under Iowa Code chapter 476A*,” p. 12 (Feb. 3, 2021). Because the Board has provided other opportunities for the public to present information for its consideration and the parties have been afforded the opportunity to submit testimony and other evidence, the Board finds that the equal protection of public health, safety, and welfare will be afforded by means other than through a hearing.

DOCKET NO. GCU-2022-0003

PAGE 12

For these reasons, the Board finds IPL sufficiently supported its waiver request under rules 1.3 and 24.15 to waive the statutory provisions and rules relating to the hearing. Because the Board is waiving the hearing, a procedural schedule is unnecessary and the Board will waive those requirements. Therefore, the Board will grant IPL's requests to waive Iowa Code §§ 476A.4 and 476A.5 and Board rules 24.6, 24.8, and 24.9.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The January 26, 2023 Request for Waiver filed by Interstate Power and Light Company, regarding portions of Iowa Code §§ 476A.4 and 476A.5 and 199 Iowa Administrative Code rules 24.6, 24.8, and 24.9, is granted.
2. The hearing scheduled for April 13, 2023, is canceled.

UTILITIES BOARD

Geri Huser Date: 2023.04.06
16:03:05 -05'00'

Richard Lozier Date: 2023.04.06
10:28:55 -05'00'

ATTEST:

Kerrilyn Russ 2023.04.06
16:20:38 -05'00'

Joshua J Byrnes Date: 2023.04.06
11:59:05 -05'00'

Dated at Des Moines, Iowa, this 6th day of April, 2023.